



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

October 8, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

IMPACT OF 9/80 WORK WEEK IMPLEMENTATION WITHIN DISTRICT ATTORNEY'S OFFICE

On June 17, 2008, your Board directed the Chief Executive Office (CEO) to report back on the following:

- The impact to the County's court system if the District Attorney's Office (DA) modified its work week to a 9/80 schedule;
- How the DA integrates with the County's Probation Department and the Court's judicial officers and staff, and how to ensure that other collaborative departments would continue to function at a five-day-work schedule if the DA implemented a 9/80 schedule; and
- The development of a policy relating to departments obtaining Board approval prior to implementing modified work schedules.

On June 10, 2008, your Board also directed the CEO to report back with options to update the County's current telecommuting policies and/or other recommendations which can decrease transportation costs for our employees while preserving public access to County services.

The information provided in this report is in response to both the June 10 and 17 Board requests.

Overview

Since 1988, the DA has offered the 9/80 alternative work schedule to its employees in the civic center area of downtown Los Angeles. Currently, approximately 687 DA employees, of which 126 are permanent attorneys, are employed under the 9/80 work schedule. Due to the DA's increase of attorneys and support staff, the 9/80 work schedule is currently being expanded and offered department-wide to the outlying districts of the County.

Impact to County Court System

The Los Angeles County Superior Court (Court) has stated that the extension of the DA's 9/80 work schedule would not impact Court operations insofar that the DA continues to acknowledge that the Court is open for business five days per week and the DA provides appropriate staffing to ensure that there are no delays in the filing of complaints, handling of daily calendars, and completion of trials. The Court noted that the Public Defender has been on a 9/80 work schedule since 1998 without interruption to Court operations County-wide and it is estimated that approximately half of all Public Defender staff, including attorneys, are on a 9/80 work schedule.

The DA's alternative work schedule policy requires a Deputy District Attorney (DDA) with trials scheduled on their designated regular day off (RDO) to appear for trial and carry over their RDO. A DDA assigned to a trial requiring that they work more than two consecutive RDOs will be removed from the 9/80 schedule at the completion of the 9/80 cycle until the trial is concluded.

Under the DA's 9/80 work policy, when a DDA is required to work an occasional RDO, they are allowed to accumulate the compensatory overtime, but must use the overtime at their supervisor's discretion. This policy is aimed to prevent excessive accumulation of compensatory days off. The supervisors are instructed to keep record of the amount of overtime accumulated and order the DDA to take days off to avoid accumulation.

A 9/80 work schedule cycle consists of eight 9-hour days, one 8-hour day, and one RDO in a two-week period. The eight-hour day and RDO fall on the same day of the week.

District Attorney's Ability to Integrate with County Departments and the Court

The DA, Sheriff, Public Defender, Alternate Public Defender, Probation, and the Court currently offer the 9/80 work schedule with certain restrictions. The opportunity for employees to take advantage of the 9/80 work schedule is

predicated upon factors such as the number of staff available per location within each unit, the services rendered to the public at each location, and the practicality of an alternative work schedule in relation to other justice agencies in each location.

Based upon past experience with the schedule, the DA believes the expansion of the alternative work schedule would not cause any disruptions to the level of service currently delivered to the public, County departments, nor the courts. Policies and procedures for the implementation of the expansion of the 9/80 schedule are provided in Attachment I. The DA will continue to monitor the progress of the expansion of the 9/80 work schedule and adjust or suspend the program should concerns arise.

Development of a Policy Relating to Departments Obtaining Board Approval Prior to Implementing Modified Work Schedules

The policy on the authority for the setting or approval of work schedules is detailed in the County Code. A review of the code by County Counsel and conclusions based on that review are detailed below:

Board Authority

The Board has addressed work schedules and the ability of department heads to set them in County Code. Under County Code sections 2.120.010 and 2.120.020 (Attachment II, County Codes), the Board adopted a five-working-day week in the conduct of all County business, subject to other alternative schedules which are deemed appropriate and in the public interest by the Board or the CEO. For example, the Department of Public Works and the Internal Services Department have, with Board approval, adopted a four-working-day week.

County Code section 2.120.020 permits department heads to "stagger, arrange, and assign" the work of the department so that "each officer or employee therein shall not work more than five days." Furthermore, County Code section 2.06.070 directs department heads to "designate the working hours" in their departments. County Code section 6.12.020 delegates to the CEO the authority to "authorize work on a 40-hour-week basis in more or less than five days" upon a finding that a five-day workweek is "impracticable." Together, these sections permit department heads, with CEO approval, to adopt alternative work schedules of less than five days per week. However, this authorization is circumscribed by collective bargaining laws.

Collective Bargaining

The Meyers Milias Brown Act (MMBA) codifies the right of represented employees to bargain collectively with public entities, such as the County. Government Code section 3505 requires the governing board, the Board, of the public agency to "meet and confer in good faith regarding wages, hours, and other terms and conditions of employment" with union representatives prior to any unilateral change in the level of wages or benefits. Accordingly, a change in the workweek schedule would be a subject of negotiation.

In instances where employees are formally seeking to organize, the MMBA requires the status quo to be maintained until an official Memorandum of Understanding (MOU) has been negotiated and approved by the Board. It is our understanding that the DDAs have recently unionized; however, they have not yet negotiated a MOU with the County. Until that occurs, the DDAs are required to maintain status quo until a MOU has been negotiated.

The Board, generally, through existing MOU's has permitted alternative work schedules, subject to the discretion of management, as part of the collective bargaining agreements.

To respond to the issue of whether the Board or a department head has the ultimate authority to permit a County department to switch to an alternate work schedule (e.g., 9/80 or 4/40), and whether there are potential collective bargaining issues that could arise from a decision to permit an alternate workweek, the CEO collaborated with County Counsel as well as Employee Relations to respond to the Board.

Our conclusion is that the ultimate authority over conditions of employment of County employees' working hours resides with the Board. However, the authority can be delegated to the CEO and to the department heads. Additionally, if represented employees are involved a change in work schedules would be a negotiable matter and subject to inclusion in a Board-approved MOU.

Options to Developing Policy for Board Authority to Approve Each Department's Alternative Work Schedule

We explored several options to address the Board's authority to approve each departments alternative work schedule. Following are the three options for consideration.

1. Request the CEO, Operations Cluster to take the lead and work with all CEO clusters on future telecommuting or alternative work schedule issues that may require modifications to current County-wide policies.
2. Adhere to the County Code as currently stated and require County departments to advise the Board and CEO of any changes in the department's work schedule.
3. Authorize the CEO and County Counsel to change County Code (sections 2.120.020, 2.06.070, and 6.12.020) and rescind the delegation of authority to County departments and the CEO to implement alternative work schedules.

Recommendation

The CEO recommends Option 1, to request the CEO Operations Clusters to work with all CEO clusters to address future telecommuting or alternative work schedule issues that may require modification to current County-wide policies.

If you have any questions regarding this matter, please contact Deputy Chief Executive Officer Doyle Campbell, Public Safety, at (213) 893-2374 or Deputy Chief Executive Officer Ellen Sandt, Operations, at (213) 974-1186.

WTF:SRH:RDC
DC:llm

Attachments

- c: Executive Officer, Board of Supervisors
County Counsel
Sheriff Department
District Attorney
Alternate Public Defender
CEO, Operations Cluster
Probation Department
Public Defender
Superior Court, County of Los Angeles

COUNTY OF LOS ANGELES – OFFICE OF THE DISTRICT ATTORNEY

9/80 Alternative Work Schedule – Policy and Procedures
Effective July 1, 2008

1. A 9/80 work schedule consists of eight 9-hour days, one 8-hour day and one Regular Day Off (RDO) in a two-week period. The eight-hour day and RDO fall on the same day of the week. The RDO is subject to approval by the supervisor.
2. Leave benefits for 9/80 employees are used based on the number of hours scheduled for the day on which the leave is taken.
3. Employees cannot work on their RDO without prior approval from their supervisor.
4. Operational needs could require that employees work on their RDO as directed by their supervisor.
5. DDAs who are assigned a trial requiring that they work more than two (2) consecutive RDOs will be taken off the 9/80 schedule at the completion of the 9/80 cycle time they are in until such time that the trial is concluded.
6. Each time an employee changes their work schedule from a 9/80 work schedule to a 5/40 work schedule, they must resubmit a 9/80 Alternative Work Schedule Application. Each time an employee changes from a 5/40 schedule to a 9/80 schedule they must resubmit the application and the 9/80 Alternative Work Schedule Agreement.
7. Employees who accumulate compensatory time, such as work on their RDOs, must use the accumulated time as directed and approved by their supervisor and in accordance with any existing policies and MOUs.
8. Employees electing to work a 9/80 work schedule must complete and submit a 9/80 Alternative Work Schedule Application and a 9/80 Alternative Work Schedule Agreement. These forms must be approved through the chain of command prior to beginning a 9/80 work schedule. All approved forms must be submitted to the employee's bureau timekeeper. The bureau timekeeper is responsible for submitting the completed material to the payroll unit.
9. Employees who are currently working a 9/80 work schedule and wish to remain on the 9/80 work schedule must also complete and submit the updated 9/80 Alternative Work Schedule Agreement. All newly signed agreements must be submitted to the bureau timekeeper.
10. Employees must sign-in upon beginning and concluding their work day, daily, at a designated location within their office or electronically, as directed by their supervisor. Employees who begin or end their work day at a location other than their headquarters, must notify their supervisor on each occasion this occurs to be excused from this section of the policy.

11. When changing from the 9/80 work schedule to the 5/40 work schedule, the employee needs to complete the 9/80 work schedule cycle they are in before the change occurs.
12. Employees must return to the 5/40 work schedule if they are on an extended leave (prolonged illness, industrial injury, etc.) or if they use Absent Without Pay (AWOP) leave for more than three consecutive days. To initiate the return to the 5/40 work schedule, employees must submit their 9/80 Alternative Work Schedule Application through the chain of command to their bureau timekeeper at least two weeks prior to taking their leave, except when there are emergency or extenuating circumstances. In such cases, the employee's supervisor is responsible for submitting the paperwork.

Jury Duty and the 9/80 Alternative Work Schedule

13. Employees must notify their supervisors immediately upon receipt of a jury summons.
14. Jury duty is limited to the "time necessary to be absent from work". Therefore, the extended workdays associated with alternative work schedules may increase the likelihood that employees should return to work following release from the court each day. If an employee is excused from jury service for a day (or part of a day) the employee must report to work during this period, so long as reasonable travel time from the court to the employee's work headquarters would allow the employee to work at least one hour on the job.
15. If an employee becomes ill during jury service and is excused by the Court from jury duty for that period of time, the absence is charged to Sick Leave.
16. Employees placed on call by the jury supervisor are expected to report to work until they are actually instructed to report for jury service.
17. Service on any County's criminal grand jury is covered, but service on a civil grand jury is not covered, because such service is entirely voluntary.
18. Represented employees will follow their respective MOUs relative to Jury Duty Leave.
19. Exempt Non-Salaried/Salaried are not required to return to the 5/40 schedule for "on-call" jury service. Employees serving jury duty receive eight hours a day of jury duty leave. Exempt Non-Salaried employees who choose to remain on the 9/80 during their service must give an hour of benefit leave, excluding sick leave, for each day served to complete their nine-hour day. Exempt-Salaried employees are not required to relinquish their time. If an employee has to report to jury duty on their RDO, they will do so on their own time. Employees do not accrue overtime nor are they allowed to take their RDO on an alternate day.

COUNTY OF LOS ANGELES - OFFICE OF THE DISTRICT ATTORNEY

9/80 Alternative Work Schedule Agreement

Employees are responsible for knowing each of the following conditions of the 9/80 Alternative Work Schedule Guidelines and for reading this 9/80 Alternative Work Schedule – Policy and Procedures, effective July 1, 2008, before signing the agreement. Please initial each instruction as you read and sign below acknowledging that you have reviewed and understand the conditions.

- _____ I understand the program is voluntary and requires management approval.
- _____ I understand that on the 9/80 schedule, I work eight nine-hour days, one eight-hour day, and have a Regular Day Off (RDO) every other week. I may select one day, as my earned RDO, subject to my supervisor's approval. I understand my RDO could be Monday, Tuesday, Wednesday, Thursday, or Friday, based on seniority in assignment. I understand the day I select must be the same RDO business day every other week (e.g. every other Monday or Tuesday or Wednesday, etc...)
- _____ If I am on any extended leave (such as prolonged illness, industrial injury, military leave, family leave, etc.) or if I am using Absent Without Pay (AWOP) time for *more than three consecutive days*, I understand I must notify my supervisor and return to the 5/40 schedule immediately. If my leave is due to emergency or extenuating circumstances, I understand my supervisor will submit the paperwork for me.
- _____ I understand that if my item is a Covered Represented item, I must return to the 5/40 schedule upon completion of the 9/80 cycle and prior to beginning Jury Duty. If my item is an Exempt Non-Salaried item and I choose to remain on the 9/80 schedule during my jury service, I understand I must give an hour of benefit leave, excluding sick leave, for each day served in order to complete my nine-hour day. I also understand if jury service falls on my RDO, I will not accrue time for that day, nor will I be able to take my RDO on an alternate day. If my item is Exempt Salaried the same policy applies to me as for Exempt Non-Salaried items, except that I do not have to give any benefit leave.
- _____ I understand that any work schedule changes must be approved through my chain of command up to my Head Deputy/Division Chief at least two weeks prior to the effective date.
- _____ I understand I must use one or more hours of benefit leave, excluding sick leave, to cover my holiday hour. If the holiday falls on my RDO, however, I understand I accrue eight hours of Holiday time. (The need to use one or more benefit hours does not apply to Exempt-Salaried employees.)
- _____ I understand that I cannot begin the 9/80 schedule on a holiday.
- _____ I understand that I cannot work on my RDO without prior approval from my supervisor.

_____ I understand that I must sign-in upon beginning my work day and sign-out at the conclusion of my work day, daily, at a designated location within my office or electronically, as directed by my supervisor. The "sign-in" will include the time I arrive to work at the start of the business day and the time I leave from work at the end of the business day. I understand that if my work day starts or ends at a location other than my headquarters office, I must notify my supervisor on each occasion this occurs to be excused from this policy.

_____ I understand that operational needs could require that I work on my RDO as directed by my supervisor.

_____ I understand that upon transfer to another assignment or office I may not be able to continue the 9/80 schedule or maintain the same RDO I previously had.

I understand that if I accumulate compensatory time, such as work on my RDO, that I am to use my accumulated time as directed and approved by my supervisor and in accordance with any existing policies and MOUs.

_____ I understand that if I am assigned a trial that will require me to work more than two (2) RDOs, that I will be taken off of the 9/80 schedule upon completion of the 9/80 cycle I am in just prior to the trial commencing, until such time the trial is completed. (DDAs only need initial.)

To maintain participation, I understand I must follow the conditions listed in this 9/80 Alternative Work Schedule Agreement. I understand that my supervisor may remove me from my 9/80 schedule and return me to the 5/40 schedule at any time.

I, _____, have read the above list of 9/80
Employee's printed name

Alternative Work Schedule conditions. I understand and agree to each condition.

Employee's Signature

Date

**County of Los Angeles
Office of the District Attorney
9/80 Alternative Work Schedule Application**

Employee Name: _____ Employee #: _____

Bureau/Division/Section/Unit: _____

Requested Work Schedule

I am requesting the following work schedule change. I understand this must be approved by my immediate supervisor and Division Chief/Head Deputy before it is sent to the Human Resources Division, Payroll Unit, and that it must be received two weeks prior to the requested effective date.

From 9/80 to 9/80 Alternative Work Schedule	
Begin 9/80 Schedule:	_____
First RDO:	_____
Work Schedule:	
Nine-hour day schedule:	_____ : _____ a.m. to _____ : _____ p.m.
Eight-hour day schedule:	_____ : _____ a.m. to _____ : _____ p.m.

From 9/80 to 9/80 Regular Work Schedule	
Last RDO:	_____
First eight-hour day:	_____

SIGNATURES	
Employee's Signature _____	Date _____
Immediate Supervisor's Name _____	Phone Number _____
Immediate Supervisor's Signature _____	Date _____
Division Chief/Head Deputy Name _____	Phone Number _____
Division Chief/Head Deputy's Signature _____	Date _____

COUNTY CODES**2.120.010 Office hours.**

Except as otherwise provided in this chapter and Titles 2 and 5 of this code, all county offices shall be open to the public from 8:00 a.m. to 5:00 p.m. on every day of the week except Saturdays, Sundays and holidays; except, however, that the board of supervisors or the chief administrative officer may establish such other days of the week and such other hours of the day which it determines to be appropriate and in the public interest for those offices it selects, including separate offices within a department. (Ord. 90-0099 § 1, 1990; Ord. 8512 § 5, 1963; Ord. 5016 § 1, 1947; Ord. 4528 § 2 (part), 1945; Ord. 4254 § 1 (part), 1943; Ord. 4099 Art. 3 § 81, 1942.)

2.120.020 Workweek.

The board of supervisors adopts the five-working-day week in the conduct of all county business, except for officers and employees working in those county offices selected to be open for different days and hours pursuant to Section 2.120.010 of this code, and it shall be the duty of the head of each department to stagger, arrange and assign the work of his department so that each officer or employee therein shall work not more than five days in each calendar week wherever in the opinion of the department it is practical to do so; and the department head may adopt such a plan as to some or all of the persons in his department or for certain weeks only for certain persons, and he may change such plan from time to time at his discretion, provided, however, that such arrangement or plan does not lessen the efficiency of the operation of the department and does not require the employment of additional help. (Ord. 90-0099 § 2, 1990; Ord. 4099 Art. 3 § 82, 1942.)

2.06.070 Assignment of work--Working hours.

A. It shall be the duty of the head of each office and department to assign the work of his office or department to the officers and employees therein, and he may reassign any work at any time he deems it expedient for the securing of efficiency, and the head of each office shall in writing notify the board of those persons in his office whom he desires to appoint or has appointed as deputies.

B. In accordance with the provisions of this section, the department head shall designate the working hours within his department, and shall determine the actual time employees shall report to their work stations (in suitable uniform if necessary) and ready to assume the duties of their job. (Ord. 6753 § 9, 1953: Ord. 4099 Art. 3 § 80, 1942.)

6.12.020 Working week.

A. Five-Day Week. All persons employed by the county shall work on a five-day-per-week basis, except as follows:

1. Where the chief administrative officer finds that a five-day workweek is impracticable, he may authorize work on a 40-hour-week basis in more or less than five days. Such change in the number of workdays shall not alter the basis for nor entitlement to receive the same rights and privileges as provided all five-day, 40-hour employees;
2. In case of extraordinary emergency, the board may authorize more than five days in any one calendar week;
3. Whenever in Section 6.28.050 the number of hours for a position is specified following the title of a position, that number shall be the basic number of hours per week for the position;
4. Persons employed in departments which are required to operate on a seven-day-week basis may work a maximum of 40, 44 or 48 hours in less than the five, five and one-half or six working days of the seven-day week, but without time off for overtime by reason thereof. Such changes in the number of workdays shall not alter the basis for nor entitlement to receive the same rights and privileges as provided all five-day, 40-hour employees;
5. As provided elsewhere in Title 6.

B. Overtime Work. Except as provided by Section 6.15.040, a department head may require any person in his department to work for more than five days per week or for more than the regular number of hours in an assigned workday or week when public necessity or convenience requires such work.

C. Persons on Daily, Hourly or Part-Time Basis. The provisions of this Chapter 6.12 relating to the five-day workweek shall not apply to any person employed upon a daily, hourly or part-time basis.

D. When determined to be necessary and when ordered to do so by the department head, persons employed in the following training positions shall work more than a basic 40 hours in any one calendar week without compensation or time off for such overtime worked:

Item 4757	Dental Intern
Item 4760	Dental Resident
Item 5408	Physician, MD Postgraduate (1st Year)
Item 5411	Physician, MD Postgraduate (2nd--7th Year)
Item 5415	Supervisor of Residents, MD

E. 56-Hour-per-Week Personnel. A 56-hour-week employee may be detailed to work on a 40-hour-week basis, and a 40-hour-week employee may be detailed to work on a 56-hour-week basis when, in the opinion of the department head, such action becomes necessary for the best interest of the department. When such detail is temporary, the employee's rights and benefits shall be based on his regular workweek.

F. 36-Hour-per-Week. A 36-hour work week is defined as a 9/10 schedule. Each 36-hour work week shall include at least one weekend day (starting at 7:00 pm Friday and ending at 7:30 am Monday). For purposes of work schedules, the normal 36-hour work week shall be three (3) 12-hour shifts. Each 12-hour shift shall include three (3) 15-minute rest periods according to the needs of the work unit and a meal break of at least 30 minutes. FLSA overtime shall be computed upon completion of the 40th hour of work in a work week consisting of seven consecutive days (168 hours). (Ord. 2005-0019 § 13, 2005; Ord. 6222 Ch. 1 Art. 7 § 111, 1953.)

6.12.020 Working week.

A. Five-Day Week. All persons employed by the county shall work on a five-day-per-week basis, except as follows:

1. Where the chief administrative officer finds that a five-day workweek is impracticable, he may authorize work on a 40-hour-week basis in more or less than five days. Such change in the number of workdays shall not alter the basis for nor entitlement to receive the same rights and privileges as provided all five-day, 40-hour employees;
2. In case of extraordinary emergency, the board may authorize more than five days in any one calendar week;
3. Whenever in Section 6.28.050 the number of hours for a position is specified following the title of a position, that number shall be the basic number of hours per week for the position;
4. Persons employed in departments which are required to operate on a seven-day-week basis may work a maximum of 40, 44 or 48 hours in less than the five, five and one-half or six working days of the seven-day week, but without time off for overtime by reason thereof. Such changes in the

number of workdays shall not alter the basis for nor entitlement to receive the same rights and privileges as provided all five-day, 40-hour employees; 5. As provided elsewhere in Title 6.

B. Overtime Work. Except as provided by Section 6.15.040, a department head may require any person in his department to work for more than five days per week or for more than the regular number of hours in an assigned workday or week when public necessity or convenience requires such work.

C. Persons on Daily, Hourly or Part-Time Basis. The provisions of this Chapter 6.12 relating to the five-day workweek shall not apply to any person employed upon a daily, hourly or part-time basis.

D. When determined to be necessary and when ordered to do so by the department head, persons employed in the following training positions shall work more than a basic 40 hours in any one calendar week without compensation or time off for such overtime worked:

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